

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 5.3.2008

CORAM

THE HON'BLE MR.JUSTICE M.JAICHANDREN

Contempt Petition No.620 of 2006

1. M/s.Genn Controls
rep. by its Partner
K.Velusamy
1A, R.K.Nagar
Behind Jai Shanthi Theatre
Singanallur, Coimbatore-5

2. Velusamy
No.42, Narayanasamy Nagar
Singanallur, Coimbatore - 5 .. Petitioners

vs.

1. E.Sathishkumar
10B Sarathy Nagar
Nanda Nagar Road
Singanallur
Coimbatore-641 005

2. Mr.K.Subburaj
10B Sarathy Nagar
Nanda Nagar Road
Singanallur
Coimbatore-641 005

3. S.Gandhinathan
10B Sarathy Nagar
Nanda Nagar Road
Singanallur
Coimbatore-641 005

4. Genn Industries
rep. by its Partners
S.Gandhinathan
10B Sarathy Nagar
Nanda Nagar Road
Singanallur
Coimbatore-641 005 .. Respondents

The Contempt Petition has been filed under Section 10 & 12 of The Contempt of Courts Act, 70/71, to punish the respondents for committing contempt of the lawful orders passed by this Court in C.R.P.No.1829 of 2005, dated 3.3.2006, under the contempt of Courts Act.

For petitioner : Mr.M.Sriram

For respondents : Mr.Balan Haridas

O R D E R

The above contempt petition has been filed praying that this Court may be pleased to punish the respondents for committing contempt of Court by wilful disobedience of the order passed by this Court, on 3.3.2006, in C.R.P.No.1829 of 2005.

2. It has been stated by the petitioners that they had filed a suit in O.S.No.1935 of 2005, on the file of the Principal District Munsif, Coimbatore, praying for a direction to the respondents and two others to render accounts for the year 2003-04 and 2004-05 and the details of the assets of the fourth respondent and for a permanent injunction restraining the defendants from manufacturing or conducting any business in the name of the defendants 4 and 5 in the suit, in exclusion of the second petitioner and to restrain the defendants from manufacturing the product of the first petitioner, namely, Genn Controls. An interim application had also been filed in I.A.No.2218 of 2005, praying for an order of ad-interim injunction restraining the respondents from manufacturing or conducting or dealing with any business in the name of Genn Industries and M/s.Origine Instruments.

3. The respondents had filed I.A.No.2303 of 2005, to set aside the interim order, dated 27.10.2005, granted in I.A.No.2218 of 2005. Another application in I.A.No.2304 of 2005, had been filed by the fifth and sixth defendants in the suit praying to set aside the order, dated 27.10.2005. The trial Court had appointed an Advocate Commissioner to inspect the property and to file a report. It had also passed a common order, dated 2.12.2005, allowing the I.A.No.2218 of 2005, and had dismissed two applications in I.A.Nos.2303 and 2304 of 2005.

4. Aggrieved by the said order, all the defendants in the suit had preferred C.R.P.No.1829 of 2005. On 3.3.2006, this Court had issued directions stating that (i) the suit can be tried earlier and suitable directions may be issued to the trial Court; (ii) The defendants may be allowed to run the business; (iii) While running the business, the said defendants have to submit daily account sheets at the end of every week into the trial Court and (iv) pending suit no alienation shall be made by the defendants in the said corpus of the firm.

5. It is submitted by the petitioners that in spite of the order passed by this Court, on 3.3.2006, the respondents had shifted the premises from 10-B Sarathy Nagar, Nanda Nagar Road, Singanallur, Coimbatore, to the premises at No.5, Bharathi Nagar, 3rd street, Coimbatore, without obtaining the necessary permission from this Court to shift the place of business.

6. It has also been submitted by the petitioners that the respondents had sold the machineries in spite of the order stating that no alienation of the corpus of the firm can be made. Due to the alienation, no machineries are available. Thus, the respondents have wilfully flouted the orders of this Court, dated 3.3.2006, made in C.R.P.No.1829 of 2005. The petitioners had furnished the accounts to the trial Court for the period from 16.3.2006 to 24.6.2006.

7. It has also been stated by the petitioners that a notice, dated 4.7.2006, had been furnished to the respondents and it had returned with the endorsement "left". The respondents had sent a reply, dated 18.7.2006.

8. The main allegations made by the petitioners against the respondents are that in spite of the order passed by this Court, on 3.3.2006, in C.R.P.No.1829 of 2005, they had shifted the business to a new premises and they have filed a statement of account issuing 'no sales' and that they had sold all the machineries, which were available with them at the time of the passing of the order by this Court.

9. The learned counsel appearing for the petitioners had contended that even though the Commissioner's report, filed in I.A.No.2218 of 2005, in O.S.No.1935 of 2005, had shown that a number of machineries and other items were available, the Advocate Commissioner appointed by this Court had found, during the inspection, that a number of machineries and other items found earlier were not available. It was also pointed out by the learned counsel appearing for the petitioners that in the affidavit filed by the respondents 1 to 4 raising objections to the Advocate Commissioner's report, it has been stated that one number of 100 channel autosort machine had been sold, on 2.3.2006. Eventhough the order of this Court had been passed only on 3.3.2006, the respondents are liable to produce the records to show that the sale of the machineries had in fact taken place on 2.3.2006 itself and not on a later date.

10. The learned counsel appearing for the petitioners had also contended that it is for the respondents to show that no machineries were sold after the petitioners had made out a prima facie case against the respondents by filing the present contempt petition.

11. Per contra, the learned counsel appearing for the respondents had submitted that the respondents had not committed any contempt, since no machineries had been sold by the respondents after the order was passed by this Court, on 3.3.2006. It is for the petitioners to show as to how the respondents would be liable for contempt of Court for wilful disobedience of the order of this Court, dated 3.3.2006.

12. The learned counsel appearing for the respondents had relied on the decision of the Supreme Court in DIRECTOR OF EDUCATION, UTTARANCHAL Vs. VED PRAKASH JOSHI (2005 SCC (L&S) 812). Paragraph 7 of the order reads as follows:

"7. While dealing with an application for contempt, the Court is really concerned with the question whether the earlier decision which has received its finality had been complied with or not. It would not be permissible for a Court to examine the correctness of the earlier decision which had not been assailed and to take a view different than what was taken in the earlier decision. A similar view was taken in K.G.Derasari Vs. Union of India. The Court exercising contempt jurisdiction is primarily concerned with the question of contumacious conduct of the party who is alleged to have committed default in complying with the directions in the judgment or order. If there was no ambiguity or indefiniteness in the order, it is for the party concerned to approach the higher court if according to him the same is not legally tenable. Such a question has necessarily to be agitated before the higher court. The court exercising contempt jurisdiction cannot take upon itself power to decide the original proceedings in a manner not dealt with by the court passing the judgment or order. Right or wrong the order has to be obeyed. Flouting an order of the court would render the party liable for contempt. While dealing with an application for contempt, the court cannot traverse beyond the order, non-compliance of which is alleged. In other words, it cannot say what should not have been done or what should have been done. It cannot traverse beyond the order. It cannot test correctness

or otherwise of the order or give additional directions or delete any direction. That would be exercising review jurisdiction while dealing with an application for initiation of contempt proceedings. The same would be impermissible and indefensible. In that view of the matter, the order of the High Court is set aside."

13. It was also contended by the learned counsel appearing for the respondents that the mere shifting of the business from one premises to the other for the sake of convenience cannot be held to be contempt of Court. Since the respondents' business had suffered due to various factors, including the pending litigation, and there were no transactions or sales, it would only be appropriate for the respondents to show 'no sales' in the accounts filed by them, as directed by this Court. Even though the petitioners had alleged that the respondents had sold away all the machineries contrary to the directions issued by this Court, by its order, dated 3.3.2006, they have not been able to substantiate their claims.

14. On analysing the rival contentions and in view of the records available, this Court is of the considered view that the petitioners have not been in a position to show sufficient cause or reason to punish the respondents for contempt of Court for wilful disobedience of the order passed by this Court, on 3.3.2006, in C.R.P.No.1829 of 2005. Since the petitioners have no evidence to show that the respondents have wilfully contravened the order passed by this Court, on 3.3.2006, in C.R.P.No.1829 of 2005, this Court finds no reason to punish the respondents for contempt of Court, as prayed for by the petitioners. Hence, the contempt petition stands dismissed. No costs.

5.3.2008

lan

INDEX : YES/NO

INTERNET : YES/NO

M.JAICHANDREN J.,

lan

To:

Cont.P.No.620 of 2006

5.3.2008